

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 422.8, 422.13, 422.14, 422.16, 422.33, 422.36, 422.37, 422.68, 423.6, 423.33, 423.58, 423D.3, and 427.1, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 32, “Receipts Exempt from Use Tax,” Chapter 39, “Filing Return and Payment of Tax,” Chapter 40, “Determination of Net Income,” Chapter 46, “Withholding,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Chapter 53, “Determination of Net Income,” Chapter 54, “Allocation and Apportionment,” Chapter 80, “Property Tax Credits and Exemptions,” and Chapter 241, “Excise Taxes Not Governed by the Streamlined Sales and Use Tax Agreement,” and to adopt a new Chapter 242, “Facilitating Business Rapid Response to State-Declared Disasters,” Iowa Administrative Code.

These amendments are proposed as a result of 2016 Iowa Acts, Senate File 2306.

New Chapter 242 and the other proposed amendments facilitate the rapid response of businesses and workers to a disaster by providing that, notwithstanding any law to the contrary, an out-of-state business or an out-of-state employee that performs disaster and emergency-related work on critical infrastructure during a disaster response period due to a state-declared disaster is not subject to income tax, corporate income tax, use tax, equipment tax, property tax or tax filing, or permit or return requirements.

Interested persons may make written comments on the proposed amendments on or before March 7, 2017. Written comments on the proposed amendments should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to [theresa.dvorak@iowa.gov](mailto:theresa.dvorak@iowa.gov). Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue by telephone at (515)281-3194 or in person at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by March 7, 2017.

After analysis and review of this rule making, these rules do not have a fiscal impact, but the statutes that they implement do have a fiscal impact. The fiscal note for 2016 Iowa Acts, Senate File 2306, dated March 28, 2016, provides a projected impact on the General Fund of a revenue reduction of \$189,000 in FY 2017 and \$324,000 in FY 2018 and future fiscal years (<https://www.legis.iowa.gov/docs/publications/FN/782026.pdf>).

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

After analysis and review of this rule making, the Department finds that these amendments are not likely to have a significant impact on jobs.

These amendments are intended to implement Iowa Code chapters 422, 423, 423D, and 427.

The following amendments are proposed.

ITEM 1. Amend rule 701—12.17(422) as follows:

**701—12.17(422 423) Purchaser liability for unpaid sales tax.** For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against

either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone. On or after January 1, 2016, see 701—Chapter 242 for a situation in which the obligation to pay the tax is not imposed on an out-of-state business operating within Iowa solely for the purpose of performing disaster or emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

This rule is intended to implement Iowa Code section ~~422.52~~ 423.33.

ITEM 2. Adopt the following **new** rule 701—12.20(423):

**701—12.20(423) Collection, permit, and tax return exemption for certain out-of-state businesses.** On or after January 1, 2016, see 701—Chapter 242 for the requirement of an out-of-state business to obtain a sales or use tax permit, collect and remit sales and use tax, or make and file applicable sales or use tax returns when operating in Iowa solely for the purpose of performing disaster or emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

This rule is intended to implement Iowa Code section 423.58.

ITEM 3. Adopt the following **new** rule 701—32.14(423):

**701—32.14(423) Exemption for tangible personal property brought into Iowa under Iowa Code section 29C.24.** On or after January 1, 2016, see 701—Chapter 242 for an exemption from use tax on tangible personal property purchased outside Iowa and brought into Iowa or used in Iowa to aid in the performance of disaster or emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

This rule is intended to implement Iowa Code section 423.6(17).

ITEM 4. Adopt the following **new** subrule 39.1(8):

**39.1(8) Returns filed by out-of-state business or out-of-state employee performing disaster and emergency-related work during a disaster response period.** On or after January 1, 2016, see 701—Chapter 242 for filing requirements of an out-of-state business or out-of-state employee as defined in Iowa Code section 29C.24 who enter Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 5. Adopt the following **new** paragraph **40.16(4)“e”**:

*e.* On or after January 1, 2016, see 701—Chapter 242 for allocation and apportionment of net income to Iowa by an out-of-state business or out-of-state employee who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 6. Adopt the following **new** subrule 46.4(9):

**46.4(9) Exemption from withholding of payments made to an out-of-state business or out-of-state employee due to state-declared disaster.** On or after January 1, 2016, see 701—Chapter 242 for withholding requirements of an out-of-state business or out-of-state employee who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 7. Adopt the following **new** paragraph **52.1(6)“f”**:

*f.* *Out-of-state business performing work in Iowa due to state-declared disaster.* On or after January 1, 2016, see 701—Chapter 242 for filing requirements for an out-of-state business who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 8. Adopt the following **new** paragraph **53.15(4)“d”**:

*d.* On or after January 1, 2016, see 701—Chapter 242 for requirements of an out-of-state business to be a part of an affiliated group filing an Iowa consolidated return that enters Iowa to perform disaster

and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 9. Adopt the following new subrule 54.6(7):

**54.6(7)** Allocation and apportionment of out-of-state business due to state-declared disaster. On or after January 1, 2016, see 701—Chapter 242 for allocation and apportionment of income derived from an out-of-state business that enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 10. Adopt the following new rule 701—80.32(427,428,433,434,435,437,438):

**701—80.32(427,428,433,434,435,437,438) Property aiding in disaster or emergency-related work.** On or after January 1, 2016, see 701—Chapter 242 for assessment of property taxes by the department under Iowa Code sections 428.24 through 428.26, 428.28, and 428.29, or Iowa Code chapters 433, 434, 435, and 437 through 438, or by a local assessor, on property brought into Iowa to aid in the performance of disaster or emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

This rule is intended to implement Iowa Code section 427.1(41).

ITEM 11. Amend rule 701—241.8(423D) as follows:

**701—241.8(423D) Exemption.**

**241.8(1)** The sales price on the lease or rental of equipment to contractors for direct and primary use in construction is exempt from the tax imposed by this chapter.

**241.8(2)** On or after January 1, 2016, see 701—Chapter 242 for an exemption on the sales price or purchase price of equipment purchased outside Iowa and brought into Iowa to aid in the performance of disaster or emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

ITEM 12. Adopt the following new 701—Chapter 242:

CHAPTER 242

FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS

**701—242.1(29C) Purpose.** The Iowa department of revenue, the Iowa department of homeland security and emergency management and the secretary of state are authorized and tasked by the legislature to jointly administer and oversee mutual aid among the political subdivisions of Iowa, other states and the federal government and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.

**701—242.2(29C) Definitions.** For purposes of this chapter, the definitions from Iowa Code section 29C.24 are adopted by reference.

**701—242.3(29C) Disaster or emergency-related work.**

**242.3(1) Out-of-state business.** On or after January 1, 2016, an out-of-state business conducting operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period does not establish a level of presence that would subject the out-of-state business to any of the following:

- a. The requirement to collect and remit any tax imposed on another person.
- b. The requirement to file any related tax return or obtain any related tax permit.
- c. Income taxes imposed under Iowa Code chapter 422, divisions II and III, including the requirement to withhold and remit income tax from out-of-state employees under Iowa Code section 422.16 or to be included in a consolidated return under Iowa Code section 422.37.
- d. Allocation and apportionment of net income of the out-of-state business under Iowa Code section 422.8 or 422.33 to Iowa.

e. Use tax under Iowa Code chapter 423 on tangible personal property purchased outside Iowa and brought into Iowa pursuant to this subrule if the tangible personal property does not remain in Iowa after the disaster response period ends.

f. Equipment tax under Iowa Code chapter 423D on equipment purchased outside Iowa and brought into Iowa pursuant to this subrule if the equipment does not stay in Iowa after the disaster response period ends.

g. Assessment of property taxes by the department under Iowa Code sections 428.1 through 428.26 and 428.29, or Iowa Code chapters 433, 434, 435, and 437 through 438, or by a local assessor under another provision of law, on property brought into the state pursuant to this subrule if the property does not remain in Iowa after the disaster response period ends.

**242.3(2)** *Out-of-state employee.* On or after January 1, 2016, the performance of disaster or emergency-related work during a disaster response period by an out-of-state employee is not a basis to determine that the out-of-state employee has established residency or a level of presence in Iowa that would subject the out-of-state employee to any of the following:

a. The requirement to complete or obtain any state or local registration, license, or similar authorization as a condition of doing business in Iowa or engaging in an occupation in Iowa, or to pay any related fee.

b. The income tax imposed under Iowa Code chapter 422, division II, the requirement to file tax returns under Iowa Code section 422.13 and the requirement to be subject to withholding under Iowa Code section 422.16. The requirement to file any related tax return or obtain any related tax permit.

c. Allocation and apportionment of net income of the out-of-state employee under Iowa Code section 422.8 to Iowa shall not increase due to work performed by the out-of-state employee under this subrule.

d. Use tax under Iowa Code chapter 423 on tangible personal property purchased outside Iowa and used in Iowa pursuant to this subrule if the tangible personal property does not remain in Iowa after the disaster response period ends.

e. Equipment tax under Iowa Code chapter 423D on equipment purchased outside Iowa and used in Iowa pursuant to this subrule if the equipment does not stay in Iowa after the disaster response period ends.

f. Assessment of property taxes by the department under Iowa Code sections 428.1 through 428.26 and 428.29, or Iowa Code chapters 433, 434, 435, and 437 through 438, or by a local assessor under another provision of law, on property brought into the state pursuant to this subrule if the property does not remain in Iowa after the disaster response period ends.

**242.3(3)** *After the disaster response period ends.* On or after January 1, 2016, an out-of-state business or out-of-state employee remaining in Iowa after the disaster response period for which the disaster or emergency-related work was performed is responsible for all taxes, fees, registration, filing or other requirements the out-of-state business or out-of-state employee would have been subject to but for Iowa Code section 29C.24.

These rules are intended to implement Iowa Code sections 29C.24, 422.16, 422.37, 422.8, 422.36, 422.33, 422.13, 423.58, 423.33, 423.6, and 427.1.